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Mark A. Charles — 51,547
Name of Attorney/Agent — Registration No.

Signature of Attorney/Agent

Case CM1715

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In the Application of:	:	
Hubesch *et al.*	:	**BEFORE THE BOARD OF APPEALS**
Serial No.: 09/674,223	:	Group Art Unit: 1751
Filed: October 27, 2000	:	Examiner: Charles I. BOYER
Confirmation No.: 5094	:	

For WRINKLE REDUCING COMPOSITION

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

Appellants appealed to the Board of Appeals by filing a Notice of Appeal, dated March 31, 2003 from the final rejection of Claims 1, 22-37 and 41-60, as contained in the final Office Action dated March 31, 2003 (Paper No. 15) of the Primary Examiner. The Commissioner is hereby authorized to charge any necessary fees to Deposit Account No. 16-2480. This Appeal Brief is being submitted in triplicate.

(1) REAL PARTY IN INTEREST

The real party in interest is The Procter & Gamble Company, a corporation of The State of Ohio, having a place of business at Cincinnati, Ohio 45202.

(2) RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences.

(3) STATUS OF CLAIMS

Claims 1, 22-37, and 41-60 are pending and have been appealed. A copy of the appealed Claims 1, 22-37, and 41-60 is attached as APPENDIX I.

(4) **STATUS OF AMENDMENTS**

All amendments have been entered.

(5) **SUMMARY OF INVENTION**

The present invention relates to compositions for reducing wrinkles comprising a wrinkle reducing active, comprising a nonionic polyhydric alcohol humectant and a water-soluble wetting agent selected from the group consisting of a cationic surfactant, a non-alkoxylated nonionic surfactant, and an anionic surfactant; a liquid aqueous carrier; and other materials. The present invention further relates to methods of using and packaging the compositions.

(6) **ISSUE**

Are Claims 1, 22-37, and 41-60 unobvious and patentable over U.S. Patent No. 5,532,023 under 35 U.S.C. § 103(a)?

A copy of the reference is attached as APPENDIX II.

(7) **GROUPING OF CLAIMS**

Claims 1, 22-37, 41-45, and 47-52 stand or fall together. Claim 46 should be considered separately as it requires elements not taught or suggested by U.S. Patent No. 5,532,023. Claims 53-60 should also be considered separately as the claims require elements not taught or suggested by U.S. Patent No. 5,532,023.

(8) **ARGUMENT**

Are Claims 1, 22-37, 43-56, and 59-60 unobvious and patentable over U.S. Patent No. 5,532,023 under 35 U.S.C. § 103(a)?

Claims 1, 22-37, and 41-60 remain rejected under 35 U.S.C. § 103(a) as being unpatentable over United States Patent No. 5,532,023 to Vogel *et al.* ("Vogel"). Appellants respectfully traverse this rejection.

Vogel discloses a process for determining acceptable commercial wrinkle reducing active mixtures. The compositions of this process contain a wrinkle reducing active comprising an effective amount of silicone; an effective amount of film forming polymer; and a liquid carrier. *See, e.g.,* Vogel, col. 2, lines 4-10. Any type of silicone can be used to impart the lubricating property of Vogel. *See, e.g.,* Vogel, col. 2, lines 22-24. Preferred silicones of Vogel include non-volatile silicone fluids such as polydimethylsiloxane gums and fluids, aminosilicones, reactive silicones and phenylsilicones. *See, e.g.,* Vogel, col. 2, lines 29-31. As optional ingredients, Vogel lists, ethoxylated surfactants, soil release polymers, antistatic agents,

brighteners, opacifiers, surfactants, anti-shrinkage agents, germicides, fungicides, anti-oxidants and the like. *See, e.g.,* Vogel, col. 8 line 37 – col. 12 line 51.

In contrast, the present invention relates to compositions for reducing wrinkles comprising a wrinkle reducing active, comprising a nonionic polyhydric alcohol humectant and a water-soluble wetting agent selected from the group consisting of a cationic surfactant, a non-alkoxylated nonionic surfactant, and an anionic surfactant; a liquid aqueous carrier; and other specified materials as claimed.

The Office Action is improperly using hindsight to reject the claims as obvious. Hindsight cannot be used to reject the claims as obvious. *In re Sernaker*, 702 F.2d 989, 994 (Fed. Cir. 1983); *In re Rinehart*, 531 F.2d 1048 (CCPA 1976); *In re Imperato*, 486 F.2d 585 (CCPA 1973); *In re Adams*, 356 F.2d 998 (CCPA 1966). It is legally improper to select from the prior art the separate components of the inventor's combination, using the blueprint supplied by the inventor. *C.R. Bard Inc. v. M3 Systems, Inc.*, 157 F.3d 1340, 1352 (Fed. Cir. 1998) citing *Fromson v. Advance Offset Plate, Inc.*, 755 F.2d 1549, 1556 (Fed. Cir. 1985) (holding the prior art must suggest to one of ordinary skill in the art the desirability of the claimed combination).

The Office Action is attempting to use hindsight to reconstruct the present invention. Specifically, the Office Action is selecting individual optional ingredients from the vast disclosure of optional ingredients in Vogel and argues that Vogel discloses the claimed invention. Indeed, the polyhydric alcohols (Vogel, col. 12 lines 55-67), alkylene glycols (Vogel, col. 12, lines 55-67), choline esters (Vogel, col. 11, lines 17-48), alkyl ether sulfates (Vogel, col. 8, lines 41-62), and ethoxylated surfactants (Vogel, col. 9, lines 29-35) are compositions disclosed by Vogel; however, these ingredients are optional ingredients of Vogel.

In addition, the required silicone reducing actives of Vogel are not required of the present invention. *See, e.g.,* Vogel, col. 2, lines 5-10. Vogel teaches the use of silicone to impart a lubricating property or increased gliding ability. *See, e.g.,* Vogel, col. 2, lines 19-21. Any type of silicone can be used to impart the lubricating property of Vogel. *See, e.g.,* Vogel, col. 2, lines 22-24. Preferred silicones of Vogel include non-volatile silicone fluids such as polydimethylsiloxane gums and fluids, aminosilicones, reactive silicones and phenylsilicones. *See, e.g.,* Vogel, col. 2, lines 29-31.

In contrast, the present invention does not require the use of silicone reducing actives. In embodiments where silicone is disclosed as an optional ingredient, the silicone containing materials are drawn to silicone surfactants, specifically polyalkyleneoxide polysiloxanes (*See,*

e.g., Specification, page 37, line 31 to page 39, line 30). The polyalkyleneoxide polysiloxanes are not disclosed or suggested by Vogel.

Furthermore, the present compositions require the wrinkle reducing active in further combination with at least one material selected from the group consisting of certain salts having the formula AM, uncomplexed cyclodextrin, and lubricant selected from the group consisting of water-insoluble cationic softener (*See, e.g.*, Specification, pages 13-22), cyclomethicones, and fatty acid esters of mono- or polyhydric alcohols or anhydride thereof containing from 1 to 8 carbon atoms.

With respect to the first member of this Markush group, Vogel does not teach or suggest a composition comprising a wrinkle reducing active as presently claimed in combination with a salt having the formula AM as recited in Claim 1.

With respect to the second member of this Markush group, Vogel does not teach or suggest a composition comprising a wrinkle reducing active as presently claimed in combination with uncomplexed cyclodextrin.

With respect to the third member of this Markush group, Vogel does not teach or suggest a composition comprising a wrinkle reducing active as presently claimed in combination with a lubricant selected from the group consisting of water-insoluble cationic softener, cyclomethicones, and fatty acid esters of mono- or polyhydric alcohols or anhydrides thereof containing from 1 to 8 carbon atoms. Vogel teaches that its compositions can optionally comprise antistatic agents such as choline esters. The Office Action alleges that the choline esters taught by Vogel satisfy both Component (A) and Component (B) of the presently claimed compositions. However, Applicants respectfully point out that Component (A) requires a water-soluble wetting agent, which can be a water-soluble cationic surfactant, and the lubricants of Component (B) include water-insoluble cationic softeners. Choline esters as taught by Vogel are typically water-soluble materials satisfying the water-soluble wetting agent of Component (A), but would not satisfy the water-insoluble cationic softeners of the lubricants of Component (B). Applicants thus submit that Vogel does not teach compositions comprising the combination of materials as presently claimed.

With respect to dependent Claim 46, Vogel does not teach or suggest a method of reducing both wrinkles and odors using a composition comprising a wrinkle reducing active and uncomplexed cyclodextrin.

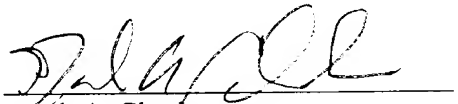
With respect to dependent Claim 53, Vogel does not teach or suggest the specific choline esters as recited in Claim 53. Claim 53 requires that, when present, the choline esters have a specific structure as defined in Claim 53, which is not taught or suggested by Vogel.

Based on the above arguments, the Office Action has failed to establish a prima facie case of obviousness. Therefore, Appellants respectfully submit that the presently claimed invention is unobvious and patentable over Vogel under 35 U.S.C. §103(a). Appellants respectfully request reversal of this rejection.

In view of the foregoing remarks, it is respectfully submitted that all claims are allowable. Accordingly, Appellants respectfully request reversal of all rejections.

Respectfully submitted,

HUBESCH ET AL.

By 

Mark A. Charles
Attorney for Appellant(s)
Registration No. 51,547
(513) 627-8150

Dated: September 29, 2003
Customer Number 27752

APPENDIX I

Appealed Claims – Case CM1715

1. A wrinkle reducing composition, comprising:

(A) a wrinkle reducing active, comprising a nonionic polyhydric alcohol humectant and a water-soluble wetting agent selected from the group consisting of a cationic surfactant, a non-alkoxylated nonionic surfactant, and an anionic surfactant;

(B) at least one material selected from the group consisting of :

a salt having the formula: AM , wherein A is a cation selected from the group consisting of sodium, calcium, potassium, and magnesium, and M is an anion selected from the group consisting of sulfate, chloride, nitrate, carbonate, borate, and carboxylate;

uncomplexed cyclodextrin; and

a lubricant selected from the group consisting of a water-insoluble cationic softener, cyclomethicones, and fatty acid esters of mono- or polyhydric alcohols or anhydride thereof containing from 1 to 8 carbon atoms; and

(C) a liquid aqueous carrier.

2.-21. (Cancelled)

22. A composition according to Claim 1, wherein said wetting agent is a cationic surfactant.

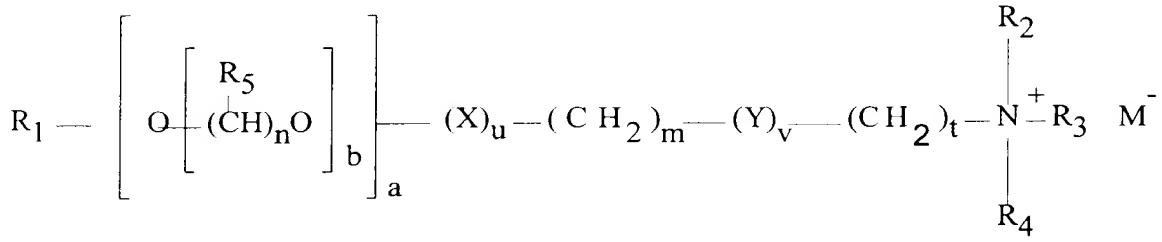
23. A composition according to Claim 2, wherein said wetting agent is a cationic surfactant, of formula:

$$[R^1N^+R3]\ X^-$$

wherein R^1 is C_{10}-C_{22} hydrocarbon group, or the corresponding ester linkage interrupted group with a C_1-C_4 alkylene group between the ester linkage and the N, each R is a C_1-C_4 alkyl or substituted alkyl, or hydrogen, and the counterion X^- is a softener compatible anion.

24. A composition according to Claim 1, wherein said cationic surfactant is a choline ester.

25. A composition according to Claim 24, is of formula:



wherein R_1 is a C_{10}-C_{22}, preferably a C_{12}-C_{14} linear or branched alkyl, alkenyl or alkaryl chain or M^-. $N^+(R_6R_7R_8)(CH_2)_s$; X and Y, independently, are selected from the group consisting of COO, OCO`, O, CO, OCOO, CONH, NHCO, OCONH and NHCOO wherein at least one of X or Y is a COO, OCO, OCOO, OCONH or NHCOO group; R_2, R_3, R_4, R_6, R_7, and R_8 are independently selected from the group consisting of alkyl, alkenyl, hydroxyalkyl and hydroxy-alkenyl groups having from 1 to 4 carbon atoms and alkaryl groups; and R_5 is independently H or a C_1-C_3 alkyl group; wherein the values of m, n, s and t independently lie in the range of from 0 to 8, the value of b lies in the range from 0 to 20, and the values of a, u and v independently are either 0 or 1 with the proviso that at least one of u or v must be 1; and wherein M is a counter anion.

26. A composition according to Claim 1, wherein said wetting agent is an anionic surfactant.

27. A composition according to Claim 1, wherein said wetting agent is present in an amount of from 0.1 to 10% by weight of the composition.

28. A composition according to Claim 27, wherein said wetting agent is present in an amount of from 0.1 to 5% by weight of the composition.

29. A composition according to Claim 28, wherein said wetting agent is present in an amount of from 0.1 to 1.5% by weight of the composition.

30. A composition according to Claim 1, wherein the nonionic polyhydric compound is a polyol having from 2 to 8 hydroxy groups.

31. A composition according to Claim 30, wherein said nonionic polyhydric compound is selected from glycerol, ethylene glycol, propylene glycol, diethylene glycol, dipropylene glycol, sorbitol, erythritol or mixtures thereof.

32. A composition according to Claim 1, wherein the nonionic humectant is present in amount of from 0.1 to 10% by weight of the composition.

33. A composition according to Claim 32, wherein the nonionic humectant is present in amount of from 0.1 to 5% by weight of the composition.

34. A composition according to Claim 33, wherein the nonionic humectant is present in amount of from 0.1 to 1.5% by weight of the composition.

35. A composition according to Claim 1, wherein the water of the liquid aqueous carrier comprises from 50% to 95% by weight of the composition.

36. A composition according to Claim 35, wherein the water of the liquid aqueous carrier comprises from 60% to 97% by weight of the composition.

37. A composition according to Claim 36, wherein the water of the liquid aqueous carrier comprises from 70% to 99% by weight of the composition.

38. (Cancelled)

39. (Cancelled)

40. (Cancelled)

41. A composition according to Claim 1, wherein said composition further comprises an alkoxylated nonionic surfactant.

42. A composition according to claim 41, wherein said alkoxylated non-ionic surfactant comprises

a polyalkyleneoxide polysiloxane surfactant,

a block copolymer of ethylene oxide and propylene oxide based on ethylene glycol, propylene glycol, glycerol, trimethylolpropane, or ethylenediamine, or

mixtures thereof.

43. A composition according to Claim 1, wherein said composition has a fluid surface tension of from about 20 dynes/cm to about 55 dynes/cm.

44. A composition according to Claim 1, wherein said composition has a fluid viscosity of from about 1 cps to about 50 cps.

45. A method for reducing or removing wrinkles on fabrics which comprises the steps of contacting the fabrics with a composition according to Claim 1.

46. A method for reducing or removing wrinkles on fabrics and malodours on fabrics which comprises the steps of contacting the fabrics with a composition comprising

(A) a wrinkle reducing active, comprising a nonionic polyhydric alcohol humectant and a water-soluble wetting agent selected from a cationic surfactant, a non-alkoxylated nonionic surfactant and an anionic surfactant;

(B) uncomplexed cyclodextrin; and

(C) a liquid aqueous carrier.

47. A method according Claim 45, wherein the composition is contacted with the fabrics by means of a spray dispenser.

48. A method according to Claim 45, wherein the fabrics are placed into a dewrinkling apparatus.

49. A method according to Claim 28, wherein the apparatus comprises spraying means capable of providing droplets with a mean diameter of 3 to 50 μm.

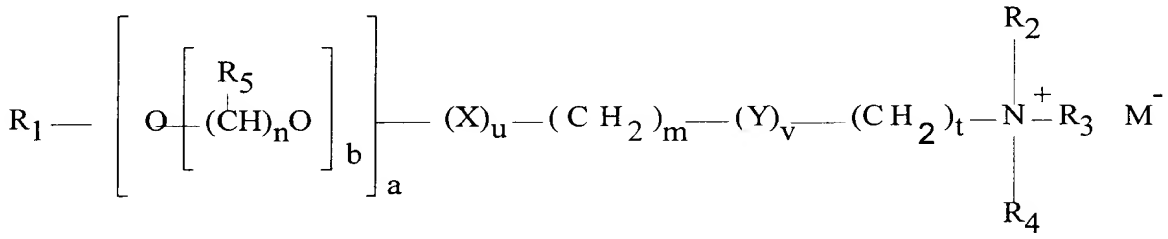
50. A packaged composition comprising the composition of Claim 1, in a spray dispenser.

51. A packaged composition according to Claim 50 or method according to Claim 47, wherein said spray dispenser comprises a trigger spray device and is capable of providing droplets with a weight average diameter of from 8 to 100 μm.

52. A method according to claim 47, wherein said spray dispenser comprises a trigger spray device and is capable of providing droplets with a weight average diameter of from 8 to 100 μm.

53. A wrinkle reducing composition, comprising:

(A) a wrinkle reducing active, comprising a nonionic polyhydric alcohol humectant and a water-soluble wetting agent selected from a cationic surfactant, a non-alkoxylated nonionic surfactant and an anionic surfactant; provided that when said water-soluble wetting agent is a cationic surfactant comprising a choline ester, said choline ester has the structure:



wherein R_1 is a C_{10}-C_{22}, preferably a C_{12}-C_{14} linear or branched alkyl, alkenyl or alkaryl chain or M^-. $N^+(R_6R_7R_8)(CH_2)_s$; X and Y, independently, are selected from the group consisting of COO, OCO, O, CO, OCOO, CONH, NHCO, OCONH and NHCOO wherein at least one of X or Y is a COO, OCO, OCOO, OCONH or NHCOO group; R_2, R_3, R_4, R_6, R_7, and R_8 are independently selected from the group consisting of alkyl, alkenyl, hydroxyalkyl and hydroxy-alkenyl groups having from 1 to 4 carbon atoms and alkaryl groups; and R_5 is independently H or a C_1-C_3 alkyl group; wherein the values of m, n, s and t independently lie in the range of from 0 to 8, the value of b lies in the range from 0 to 20, and the values of a, u and v independently are either 0 or 1 with the proviso that at least one of u or v must be 1; and wherein M is a counter anion; and

(B) a liquid aqueous carrier.

54. A composition according to Claim 53, wherein said composition further comprises a lubricant selected from a water-insoluble cationic softener, nonionic softener selected from cyclomethicones, fatty acid esters of mono- or polyhydric alcohols or anhydride thereof containing from 1 to 8 carbon atoms.

55. A composition according to Claim 53, wherein said composition further comprises a salt having the formula: AM , wherein A is a cation selected from the group consisting of sodium, calcium, potassium, and magnesium, and M is an anion selected from the group consisting of sulfate, chloride, nitrate, carbonate, borate, and carboxylate.

56. A composition according to Claim 53, wherein said composition further comprises an uncomplexed cyclodextrin.

57. A composition according to Claim 53, wherein said composition further comprises an alkoxylated nonionic surfactant.

58. A composition according to Claim 57, wherein said alkoxylated nonionic surfactant comprises a polyalkyleneoxide polysiloxane surfactant, a block copolymer of ethylene oxide and propylene oxide based on ethylene glycol, propylene glycol, glycerol, trimethylolpropane, or ethylenediamine, and mixtures thereof.

59. A composition according to Claim 53, wherein the nonionic polyhydric compound is a polyol having from 2 to 8 hydroxy groups.

60. A composition according to Claim 53, wherein said nonionic polyhydric compound is selected from glycerol, ethylene glycol, propylene glycol, diethylene glycol, dipropylene glycol, sorbitol, erythritol or mixtures thereof.

APPENDIX II